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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re F.M., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

F.M.,

Defendant and Appellant.

A147510

(San Francisco County
Super. Ct. No. JW146166)

Appellant F.M. appeals from the juvenile court's dispositional order, challenging a probation condition regarding searches of electronic devices. We modify the minutes to conform to the juvenile court's oral pronouncement of the condition and, as so modified, affirm.

BACKGROUND

In July 2014, appellant was declared a ward of the court after he admitted a charge of second degree robbery (Pen. Code, §§ 211, 212.5) alleged in a Welfare and Institutions Code section 602 petition.¹ According to the probation report, appellant and others assaulted and robbed two victims, taking a cell phone, among other items. The juvenile

¹ All undesignated section references are to the Welfare and Institutions Code.

court placed appellant on probation with various conditions. In November 2014, appellant admitted carrying a concealed dirk or dagger (Pen. Code, § 21310) as alleged in a separate wardship petition. According to the probation report, at the time of this offense appellant was with two known “Norteno gang affiliates.”

In October 2015, appellant admitted to violating his probation conditions by failing to comply with his curfew, failing to attend school regularly, and failing to follow the directives of his probation officer. The juvenile court released appellant on home detention with various conditions. In December 2015, appellant admitted to his probation officer violating his curfew again.

A contested dispositional hearing began in January 2016. Probation proposed a condition requiring appellant to submit to a search of any electronic devices in his possession or control and disclose passwords for such devices as well as his social media accounts. Appellant objected to the proposed condition as invalid under *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*) and overbroad.

At the contested hearing, appellant’s probation officer testified that he was recommending the electronics search condition because, “based on my experience, a lot of youth and a lot of gang members use social media as a way to bully and promote gang violence and gang activities. There’s been numerous occasions where I’ve actually searched youth cell phones and was able to find evidence of them where they’re holding guns or showing gang signs. [¶] So I think it’s imperative that the Court orders this so that if [appellant] wants to do well, he will refrain from being involved in any of these situations. And some of the individuals that’s noted in my report are known to associate or are actual members of gangs. So with the social media and all the -- the cell phone recommendation is -- it’s not only to protect the community, but it’s also in [appellant’s] best interest so that he is not able to promote any gang activity that will bring harm or put himself at risk of any harm or in the community.”

The juvenile court overruled appellant’s objection to the electronics search condition, stating appellant’s probation officer “laid out the record for why it is a necessary term and condition”; the court had “considered the minor’s social history [and]

the circumstances of his particular crimes,” including one crime committed while with two known gang members; and appellant “does admit that he associates with Norteno gang members.” The court also stated it “narrowly tailored [the condition]. It’s limited to text messages, voice messages, things of that nature. . . . I’m not authorizing Probation or law enforcement to search or ask for things that clearly show that they belong to, say, financial documents, like a Wells Fargo or B of A app, or medical documents or issues such as a Kaiser or Blue Shield app.” On the minute order, the condition is included in a preprinted list and set forth as follows: “Any electronic and/or digital device in your possession or under your custody or under your control may be searched at any time of the day or night, by any peace or probation officer, with or without a warrant or with or without reasonable or probable cause. Electronic and/or digital devices include but are not limited to cell phones, smartphones, [i]Pads, computers, laptops and tablets. You are also ordered to provide any and all passwords to the devices upon request to any peace or probation officer.”

DISCUSSION

Appellant’s sole challenge is to the electronics search condition. He argues here, as he did below, that the condition is unreasonable under *Lent*, *supra*, 15 Cal.3d 481 and is constitutionally overbroad.

I. Reasonableness Under *Lent*

“ ‘A juvenile court enjoys broad discretion to fashion conditions of probation for the purpose of rehabilitation and may even impose a condition of probation that would be unconstitutional or otherwise improper so long as it is tailored to specifically meet the needs of the juvenile.’ ” (*In re J.B.* (2015) 242 Cal.App.4th 749, 753–754.) Under *Lent*, “[a] condition of probation will not be held invalid unless it ‘(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality.’ ” (*Lent*, *supra*, 15 Cal.3d at p. 486.) “In order to invalidate a condition of probation under the *Lent* test, all three factors must be found to be present. [Citations.]

This three-part test applies equally to juvenile probation conditions.” (*In re J.B.*, *supra*, at p. 754.)

The parties agree the electronics search condition meets the first two prongs of the *Lent* test, but dispute whether it satisfies the third. Our Supreme Court has granted review in a case presenting this precise issue: whether an electronics search condition was justified on the sole ground that it is reasonably related to future criminality. (*In re Ricardo P.*, review granted Feb. 17, 2016, S230923.)

The issue has divided Courts of Appeal. (See *In re P.O.* (2016) 246 Cal.App.4th 288, 291 [citing cases].) For example, *In re P.O.* found an electronics search condition reasonably related to future criminality. (*Id.* at p. 296.) *In re P.O.* relied on *People v. Olguin* (2008) 45 Cal.4th 375 (*Olguin*) for the proposition that “a probation condition that enables probation officers ‘to supervise [their] charges effectively is . . . “reasonably related to future criminality.” ’ ” (*In re P.O.*, at p. 295 [citing *Olguin*].) *In re P.O.* concluded the electronics search condition “reasonably relates to enabling the effective supervision of [the minor]’s compliance with other probation conditions.” (*Id.* at p. 295.)

In contrast, *In re J.B.* struck such a condition as unreasonable. (*In re J.B.*, *supra*, 242 Cal.App.4th at p. 752.) *In re J.B.* noted that *Olguin* emphasized the reasonableness of the condition and concluded “[t]he fact that a search condition would facilitate general oversight of the individual’s activities is insufficient to justify an open-ended search condition permitting review of all information contained or accessible on the minor’s smart phone or other electronic devices.” (*In re J.B.*, *supra*, at pp. 757–758.)

While awaiting guidance from the Supreme Court on the matter, we agree with the reasoning of *In re P.O.* and find the electronics search condition reasonably related to appellant’s future criminality. The juvenile court’s conclusion that the condition will help probation officers monitor appellant’s compliance with probation conditions,

including the condition prohibiting him from associating with gang members, is not an abuse of discretion.²

II. *Constitutional Overbreadth*

Appellant next argues the electronics search condition is not narrowly tailored. Appellant argues the requirement that he provide social media passwords should be struck or, in the alternative, the condition should be modified to reflect the court's oral pronouncement excluding medical and financial data.³

“When a probation condition imposes limitations on a person's constitutional rights, it ‘ ‘must closely tailor those limitations to the purpose of the condition’ ’—that is, the probationer's reformation and rehabilitation—‘ ‘to avoid being invalidated as unconstitutionally overbroad.’ ’ ” (*In re P.O.*, *supra*, 246 Cal.App.4th at p. 297.) “A probation condition imposed on a minor must be narrowly tailored to both the condition's purposes and the minor's needs, but ‘ ‘ ‘ ‘a condition . . . that would be unconstitutional or otherwise improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court.’ ’ ’ ’ ” (*Ibid.*)

The probation officer testified specifically that youth use social media to promote gang activity, and the juvenile court found appellant admitted associating with gang members. In light of these facts, the requirement that appellant provide social media passwords is not overbroad.

As for the exclusion of medical and financial records set forth in the trial court's oral pronouncement, the People do not contest these limits but argue modification of the minute order is unnecessary because it is “reasonably understood” to exclude such

² We need not and do not decide whether, as the People argue, the condition is also warranted to monitor whether appellant is in possession of stolen electronics, in light of his participation in a robbery involving a stolen cell phone. (See *In re Malik J.* (2015) 240 Cal.App.4th 896, 902 [“identifying whether an electronic device is stolen has no relationship to accessing the content of [the minor's] social media accounts”].)

³ In his reply brief, appellant raises an additional argument regarding the rights of others who have loaned their electronic devices to appellant. We decline to consider this belated argument. (*Cates v. Chiang* (2013) 213 Cal.App.4th 791, 814–815.)

information. We disagree. The written condition contains no implicit or explicit limits excluding financial or medical information. We will order the written condition modified to reflect the limits expressed in the court's oral pronouncement. (*People v. Zackery* (2007) 147 Cal.App.4th 380, 385 ["Where there is a discrepancy between the oral pronouncement of judgment and the minute order or the abstract of judgment, the oral pronouncement controls."].)⁴

DISPOSITION

The probation condition set forth in the January 21, 2016 minute order is modified as follows: "Any text messages, voicemail messages, call logs, photographs, e-mail accounts and social media accounts appearing on any electronic and/or digital device in your possession or under your custody or under your control may be searched at any time of the day or night, by any peace or probation officer, with or without a warrant or with or without reasonable or probable cause. Electronic and/or digital devices include but are not limited to cell phones, smartphones, iPads, computers, laptops and tablets. You are also ordered to provide any and all passwords necessary to access the information specified upon request to any peace or probation officer." As so modified, the judgment is affirmed.

⁴ The People suggest no such limitation is necessary because the record is silent as to whether appellant currently stores any financial or medical records on his electronic devices. However, the trial court's oral ruling clearly contained this limitation and controls over the preprinted form condition contained in the minute order. (*People v. Zackery, supra*, 147 Cal.App.4th at p. 385.)

SIMONS, Acting P.J.

We concur.

NEEDHAM, J.

BRUINIERS, J.

(A147510)